

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – MARCH 16, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, and Mayor/Chairman Kennedy  
Remote Location: Council/Agency Member Tate (6825 E. 4<sup>th</sup> Street, Scottsdale, AZ for Closed Session Only)  
Late: Council/Agency Member Sellers (arrived at 6:03 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Mayor/Chairman Kennedy announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

Mayor Pro Tempore/Vice-chairman Tate opened the Closes Session items to public comment in Arizona. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m.

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## **CLOSED SESSION ANNOUNCEMENT**

Acting City Attorney/Agency Counsel Siegel announced that under anticipated litigation pursuant to Government Code Section 59495 b & c, one of the anticipated litigations, the Council created a subcommittee consisting of Mayor Kennedy and Mayor Pro Tempore Tate.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

Mayor/Chairman Kennedy led the Pledge of Allegiance.

## **PROCLAMATIONS**

Mayor Kennedy presented Red Cross Disaster Services Volunteer Pat Moore with a proclamation, declaring March as Red Cross Month. Mr. Moore stated that the Red Cross is grateful and depends upon the generous contribution of the citizens of Morgan Hill and Santa Clara County to help them prepare and respond to local emergencies.

## **CITY COUNCIL REPORT**

Council Member Sellers indicated that the Council reorganized its subcommittee structure. He stated that he chairs the Community & Economic Development Committee and serves with Council Member Carr, pursuing a number of projects. He felt that the reorganization of the committees will help the Council become more efficient. He said that this is an exciting time for the downtown as new development is occurring. He also serves on the Regional Planning and Transportation Committee along with Mayor Kennedy. He stated that he attended a Valley Transportation Authority (VTA) Policy Advisory Committee meeting last week. He said that this Advisory Committee advises the VTA Board on policy issues. He said that there have been a few significant issues raised. He noted that there is an item on this evening's agenda relating to a significant policy being proposed by VTA to provide additional funding for transportation. He stated that he is looking forward toward serving on both committees. He indicated that a groundbreaking ceremony was held this morning for the Viale housing project. He stated that this is a residential project that is targeted for teachers. This project will assist teachers reside in this community. He acknowledged the efforts of Council Member Carr who pushed this project forward; making this project possible.

Mayor Kennedy reported on the Regional and Planning Transportation Committee, indicating that the Committee met on March 11. He stated that there were a few issues discussed that are of interest to the City: 1) The Santa Clara County Local Agency Formation Commission (LAFCo) has recently provided a map of suggested areas for annexation within the City of Morgan Hill's sphere of influence. He indicated that there are approximately 10+ pockets of unincorporated lands throughout the City that LAFCo recommends be incorporated into the City. He stated that the Committee discussed these pockets of lands and that they would be providing a recommendation to the entire Council on this issue. 2) He said that there is another major issue that is coming up with respect to VTA; the Long Term

Transit Capital Investment Program. He said that approximately \$8-10 billion for various projects are at stake. He indicated that the deadline to get this information to the VTA Board of Directors is April 22. It was suggested that the Council receive a presentation from VTA staff and recommended that the Council agendaize the discussion of the Long Term Transit Capital Investment Program as soon as possible so that the Council can provide its input and recommendations to the VTA Board of Directors on matters relating to transit, transportation, highway, freeways, buses, Caltrain, etc. 3) Also, discussed were federal and state legislative programs, Valley Transportation Plan 2030, and the development of Coyote Valley. He indicated that he received information yesterday that the City of San Jose has agreed to come to Morgan Hill and make a presentation to the Council and South County Stakeholders. If this information is correct, he felt that this would be a step in the right direction. He said that he will be meeting with San Jose staff to make sure that the City of Morgan Hill's issues are addressed.

### **CITY MANAGER REPORT**

City Manager Tewes informed the Council that the City will be opening bids next week for the construction of the indoor recreation center. It is staff's belief that 3-4 strong bidders will result in competitive bids. Staff plans to return to the Council with a recommendation at its first meeting in April on how to proceed. He indicated that only one proposal was received in response to the City's request for proposal for a public-private partnership for the outdoor sports complex. He informed the Council that staff will present the Council with a report next week on the process and the schedule for reviewing the outdoor sports complex proposal. He noted that the Mayor has expressed an interest on the VTA's Transit Investment Plan, indicating that the discussion of this item will be agendaized for the Council's March 23, 2005 meeting.

### **CITY ATTORNEY REPORT**

Acting City Attorney Siegel stated that he did not have a report to present this evening.

### **OTHER REPORTS**

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Leonard Cretcher indicated that his remarks this evening were aimed toward helping City management and staff to resolve any and all future disputes over the aquatics center pool space allocation. He felt the Council needs to discuss a number of issues in order to provide the Parks & Recreation staff with a strong framework for future policy development in order to correct some of the policies currently in place. He requested that the Council review mandates of the aquatics center: a) do not operate at a loss; b) groups renting space from the center must contain a large percentage of residents from Morgan Hill (requested that this policy be reconsidered); and c) look at programs being offered to determine whether they compete and/or take away from the full potential for the aquatics center. As far as the solution so far presented, he laid out a list for Council review (handout to the Council). He felt that with a stronger

policy framework, the aquatics center can still provide for the proper mandates while providing an aquatics space rental policy that is fair and equitable to all.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Sellers requested that item 7 and 12 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** Consent Calendar Items 1-6, 8-11, 13 and 14, as follows:*

1.        **PURCHASE OF POLICE DEPARTMENT VEHICLES**

**Action:** *1) **Authorized** Vehicle Purchases and Police Equipment Build Outs Through The Ford Store Morgan Hill for Vehicles Identified in This Report for a Total Cost of \$168,400; and 2) **Declared** Vehicles #P91502, #P96230, #P95201, and #P96302 as Surplus, and **Authorized** Sale at Auction.*

2.        **APPROVAL OF CONSULTANT AGREEMENT AMENDMENT WITH HARRIS & ASSOCIATES FOR 2003-2004 PAVEMENT RESURFACING PROJECT**

**Action:** ***Approved** Consultant Agreement Amendment in the Amount of \$10,500 with Harris and Associates for Providing Additional Construction Inspection Services for the 2003-2004 Pavement Resurfacing Project; Subject to Review and Approval by the City Attorney.*

3.        **FINAL MAP APPROVAL FOR MISSION RANCH PHASE VIII (TRACT 9657)**

**Action:** *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

4.        **UTILITIES AND ENVIRONMENT SUBCOMMITTEE MINUTES OF FEBRUARY 28, 2005**

**Action:** *1) **Reviewed** and **Accepted** Minutes.*

5.        **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR GATEWAY CENTER PHASE I**

**Action:** *1) **Adopted** Resolution No. 5894, Accepting the Public Improvements for Gateway Center Phase I; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

6. **ACCEPTANCE OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I PROJECT**  
*Action: 1) **Accepted** as Complete the Edmundson Water Main Distribution, Phase I Project in the Final Amount of \$382,553; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
8. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT**  
*Action: 1) **Authorized** the Appropriation of \$100,000 from the Unappropriated Water Fund Balance into Account 650-42230-5710 to Fund the Continuing Legal Services of Hatch & Parent; and 2) **Authorized** the City Manager to Execute an Amendment to Agreement with the Law Firm of Hatch & Parent; Subject to Review and Approval by the City Attorney.*
9. **THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**  
*Action: **Authorized** the City Manager to Execute a Third Amendment to Agreement with the Strombotne Law Firm.*
10. **CONTINUATION OF ORDINANCE NO. 1714, NEW SERIES**  
*Action: **Continued the Adoption** of Ordinance No. 1714, New Series, to April 6, 2005. Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS).***
11. **ADOPT ORDINANCE NO. 1715, NEW SERIES**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1715, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT).***
7. **MORGAN HILL LIBRARY SCHEDULE AND ARCHITECT'S FEE AMENDMENT**

Council Member Sellers noted that the report addresses the need for a 10% increase due to an increase in the scope of work, delayed time, etc. In thinking back to the allocation for the Library funding, he felt that the Council allocated a significant/high amount of funding to cover a variety of possibilities in terms of the Library. He inquired whether the City was within a reasonable framework with regard to funding or will there be a need to give further consideration to added costs.

Jim Dumas indicated that a contingency is included in the soft costs and that it is substantially more than what is before the Council. He felt that the costs are well within this range.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent: 1) **Accepted** Schedule; and 2) **Authorized** the City Manager to Prepare and Execute an amendment to the Contract with Noll and Tam in the Amount of \$210,200, Subject to Review and Approval by the City Attorney.*

**12. ACCEPTANCE OF DONATIONS FOR THE AQUATICS CENTER FROM MORGAN HILL AQUATIC CENTER, INC. (Continued from 2/16/05)**

Council Member Sellers said that the last time there was discussion about donations, there were several issues regarding the Aquatics Center Inc.'s status as a 501c3 and to the degree that they have incorporated in terms of meeting on a regular basis, etc. He did not read in the staff report that the Aquatics Center Inc. has made any changes in terms of their operations or their organizational structure (e.g., how often they meet, have they enlarged their board, etc.).

Recreation and Community Services Manager Spier said that staff has not pursued whether the Aquatics Center Inc. is complying with the 501c3 regulations and how the Foundation is operating. Staff has separated the issue into three components with the first component being to clarify the donated items from the Aquatics Foundation. However, staff will further pursue the 501c3 status. She said that the Parks & Recreation Commission has commenced the review and process relating to the lane assignments. She informed the Council that she would report back on the operations of the Foundation at a future meeting.

Council Member Sellers said that he was anxious about moving forward with an action on this item until such time that there is additional interaction with the Council and the Foundation. He felt that there is an implied liability if the City is interacting with an organization that is not undertaking normal operating practices for non profits. He said that recent laws have increased liabilities and responsibilities for non profits. He said that he would reluctantly approve the action this evening. However, before moving forward, he requested that the City makes sure that the Aquatics Foundation comes before the Council and that their operating procedures are clear.

Council Member Grzan concurred with the comments as expressed by Council Member Sellers and that it was his hope that the Foundation hears the Council's concerns. Further, that the Aquatics Foundation would approach the Council with regards to the operation of their business affairs soon.

**Action:** *On a motion by Council Member Carr and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Accepted** Donations by the Morgan Hill Aquatics Center, Inc. to the Aquatics Center.*

***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the City Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Tate absent, **Approved** Consent Calendar Items 13 and 14 as follows:*

**13. JOINT REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 23, 2005**

**Action:** ***Approved** the Minutes as written.*

**14. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 2, 2005**

**Action:** ***Approved** the Minutes as written.*

### ***City Council Action (Continued)***

#### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 15 be pulled from the Consent Calendar as he has a conflict.

**15. ACCEPTANCE OF PAVEMENT RESURFACING PROJECT FOR 2003-2004**

Mayor Kennedy indicated that Council Member Grzan is next in line to serve as Mayor Pro Tempore and appointed him as acting Mayor Pro Tempore before stepping down from the Dias.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Mayor Kennedy and Mayor Pro Tempore Tate absent: 1) **Appropriated** an Additional \$16,688 in Unappropriated Measure C Capital Improvement Project (CIP) Funds which Accrue to the Public Facility/Non-AB1600 (346) Fund for this Project; 2) **Accepted** as Complete the 2003-2004 Street Resurfacing Project in the Final Amount of \$671,378.39, Including Approval of Change Orders 4, 5, 8, and 9; and 3) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

Mayor Kennedy resumed his seat on the Dias.

### ***City Council Action***

#### **PUBLIC HEARINGS:**

**16. ZONING AMENDMENT, ZAA-02-18: COCHRANE-IN-N-OUT BURGER – *Ordinance No. 1716, New Series***

Director of Community Development Molloy-Previsich presented the staff report, indicating that the recommended action before the Council would provide a one year extension of time for the construction

of restaurants in the Tharoldson Planned Unit Development. She informed the Council that the In and Out Burgers organization has secured an agreement with Denny's Corporation who is currently going through the City's development review process. However, the In and Out Burgers organization will not be able to meet the zoning approval deadline of May 2005. Therefore, they are requesting a zoning amendment to allow them an additional year to construct their restaurant. However, the sit down restaurant will still need to be under construction within this coming year prior to issuing a building permit for the In and Out Burgers Restaurant.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers said that the public is anxious to have In and Out Burgers move forward. He said that there continues to be an interest, on the part of the Council, in meeting the goal of having a quality sit down restaurant in Morgan Hill as well as attract In and Out Burgers as quickly as possible. Unfortunately, it has taken longer than anyone had hoped for. He said that the Economic Development Committee has reiterated this feeling and expressed an interest in working with the applicant. He noted that the applicant for In and Out Burgers was in attendance this evening.

Council Member Carr inquired as to the requested one year extension.

Ron Volle, Real Estate Manager for In and Out Burgers, stated that he is requesting a year extension. However, he does not believe that this much time would be needed. He stated that In and Out Burgers is close to meeting the May 2005 deadline. He informed the Council that Denny's Restaurant will be going through design review tomorrow night and that it was his belief that it will receive architectural and site review approval. In and Out Burgers has its building plans ready to submit for approval and that Denney's is working on their building plans, awaiting the final approval of the exterior architecture of their building. Once the plans approved by the City, both restaurants will commence construction. It is his hope that they would be able to commence construction in May, June or July 2005.

Council Member Grzan stated that he would not be supporting the extension. He indicated that he has served on the General Plan Task Force and served with Planning Commissioner Charles Weston who opposes the request for a one year extension for the same reason he will be opposing the extension. He noted that this is a gateway into the City and that it was the intent of the members of the General Plan Task Force that gateways not be built in a fashion similar to other gateways or interchanges along Highway 101. It was his belief that it was the intent of the General Plan Task Force not to have this type of business in the City's gateways. He expressed concern that the City will be seeing other incursions; changing the community he envisioned to becoming a city similar to other cities along Highway 101 where you can not distinguish the differences between them.

Council Member Sellers stated that he appreciated Council Member Grzan's comments and concerns. He noted that this project will go through a significant site review process in order to make sure that the design and architectural elements are appropriate for Morgan Hill. It was his hope that the Council will come close to meeting Council Member Grzan's concerns through the design process.



Mayor Kennedy said that he welcomes In and Out Burgers to Morgan Hill as many residents have expressed a desire to have them in the community. He stated that he understands the issues relating to the gateway and felt that the City needs to do its best to provide well designed, aesthetically pleasing gateways to the community. However, there is also a need to bring in restaurants and facilities that are popular with the community in terms of economic development and to help with revenues. It was his hope that the Council would support the request.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 3-1 vote with Council Member Grzan voting no and Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1716, New Series, the Zoning Amendment Ordinance.*

Council Member Carr said that those watching this three year process know that the Council has struggled with this project as well. He stated that he shares the gateway concerns. He felt that the Council came to the best mitigations available in asking In and Out Burgers to bring in a partner in order to build in the gateway. He noted that In and Out Burgers has done this. He understands, in reading the materials, that this has not been an easy process and that he was not satisfied with the results of the process. He felt that the partnership to be created may be more damaging to the gateway and that it was his hope that there will be an opportunity to have a discussion about this concern. He noted that the action before the Council is to follow up with a commitment made to In and Out Burgers two years ago and provide a little more time to this restaurant. He stated that he would support the one year extension as the Council would be keeping its word, given two years ago, in requesting that In and Out Burgers to do some things, noting that they have. Therefore, he was compelled to support the extension.

Council Member recommended that the Council look at the appropriateness of businesses and that they conform to the City's planning, zoning and other criteria. He understands that there are significant pressures on the City to look at revenues and revenue sources. However, he expressed concern that the pressure for revenues may compromise the community; resulting in the loss of the City's rural character and the things that make Morgan Hill special.

Council Member Sellers said that there may be areas where Council Member Grzan's concerns may have some validity and that the Council needs to be cautious about uses in other intersections. He stated that revenue generation played no part on his decision as it is relatively minor in this case.

Council Member Carr said that his decision on the use has never been based on revenue interest as he did not believe that a fast food restaurant will generate much revenue for the City. However, the issue is about services for citizens and the needed services that he keeps hearing from families in Morgan Hill for sit down restaurants and for the support he has heard and felt in the community for In and Out Burgers.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council **Introduced** Ordinance 1716, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL***

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***APPROVING AN AMENDMENT TO ORDINANCE NO. 1616, NEW SERIES, TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253 SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FEET IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & - 024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER), by the following roll call vote: AYES: Carr, Kennedy, Sellers; NOES: Grzan; ABSTAIN: None; ABSENT: Tate.***

**17. ZONING AMENDMENT, ZA-04-15/DEVELOPMENT AGREEMENT, DA-04-13: HILL-GERA – Ordinance Nos. 1717 & 1718, New Series**

Director of Community Development Molloy-Previsich presented the staff report, indicating that this is a request for the approval of a precise development plan for a nine-lot subdivision and future subdivision/development on four existing lots located to the north of Jean Court.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** the Mitigated Negative Declaration.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1717, New Series, the Zoning Amendment Ordinance.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1717, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in full of Ordinance No. 1718, New Series, the Development Agreement Ordinance.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1718, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17:***

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***HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

**18. ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR COMPANY – Ordinance No. 1719, New Series**

Director of Community Development Molloy-Previsich presented the staff report, indicating that the zoning ordinance amendment would increase the maximum allowable sign area for on site freestanding monument signs in commercial and industrial zoning districts in a PUD on lots of five acres or more. She stated that the zoning amendment would increase the allowable sign size from 48 square feet to 50 square feet. She informed the Council that the Fords' standard monument sign is 1.54 square feet too large and did not fit within the City's ordinance. She noted that there is no mechanism in place for staff or the Site and Architectural Review Board to approve the sign. She stated that a custom sign for the Ford dealership would exceed \$100,000 while their standard sign costs approximately \$17,000.

Council Member Carr noted that there was discussion about a variance request in the Planning Commission minutes attached to the staff report. He inquired whether there was a way for the City to create a means for a business to request a variance or a special use permit rather than changing the sign ordinance. He did not understand the explanation given to the Planning Commission when they asked about the provision for a variance request and why it was felt that it was not a good idea.

Ms. Molloy-Previsich stated that any time you consider a variance, you need to compare it to similar situated properties and that there should be special circumstances associated with the property itself. If the City was going to approve a variance for one situation, it may lead to other variances for other similar situations. If it is felt that a 50 square foot size is a reasonable standard as opposed to the existing 48 square feet standard. The Council could make the 50 square foot maximum size the standard for larger sized lots rather than placing the applicant, Planning Commission and/or the Council in a position of having to find special circumstances/hardships.

City Manager Tewes informed the Council that the City has not had good experiences with variances because there are 7-8 findings that must be made in order to grant a variance. He said that typically, the findings to grant a variance are hard to make. Should the Council believe that the 50 square foot signage is an appropriate size for larger lots, the Council could move forward with the amendment rather than a variance process as it is difficult to meet.

Council Member Sellers noted that the Ford's Store has a 50 square foot standard sized sign. He inquired whether the 50 square foot maximum is a fairly standard size in other communities for projects of this nature.

Ms. Molloy Previsich said that it has been her experience that a 50 square foot monument sign for businesses of this nature and size have been approved in other communities.

Council Member Grzan stated that he would prefer and support the approval of a variance as opposed to a general change in the City's policies regarding signage. He recommended that the City hold to higher tolerances or qualities regarding signage. He felt that the size of signage is a concern and that he would support upholding the City's ordinance on signage.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers felt that the size of signs will be an issue that the City will have to deal with in the future given the fact that Ford's Store representatives states that it is their standard sign. He said that there may be other similar entities that may make similar requests. He noted that the request is only a 4% increase in size and would be negligible to anyone who would see the sign. He stated that he would prefer to deal with the issue at this time. He noted that the City Manager has indicated that there is difficulty in getting variances approved because of the findings that need to be made.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 3-1 vote with Council Member Grzan voting no and Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1719, New Series.*

Council Member Carr stated that he was not comfortable moving forward with the ordinance amendment at this time even though it may be the direction the Council takes. He felt that the hurdles for variances need to be high. He appreciates the recommendation by the Planning Commission that the increased signage be approved on larger lots and PUDs. However, he does not know how many parcels this standard would apply to in Morgan Hill. He felt that 50 square feet as opposed to 48 square feet sounds too big of a difference in the size of a sign. He stated that he needs to understand what is being proposed. He did not believe that the City should be changing its ordinance for the value of one business owner in town. Therefore, he would not support the ordinance this evening. He stated that he was not closed to the idea of researching this item and determining further implications of the recommended action as opposed to this one instance.

Mayor Kennedy said that it may be helpful to ask staff to return with additional information about the size of the sign and continue this item to a future meeting (e.g., what is the typical monument sign size standard in other cities).

**Action:** *Council Sellers rescinded his motion.*

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **continued** the public hearing to April 6, 2005.*

## **19. WATER CONSERVATION SUBMETERING ORDINANCE – Ordinance No. 1719, New Series**

Programs Manager Eulo presented the staff report, indicating that there can be at least a 15% savings in water use in apartment buildings if each unit has a separate water meter. He said that the ordinance has

been drafted to require individual metering in new multi family units. He informed the Council that the City's below market housing consistently seems to have one meter for the building. In speaking with South County Housing staff to advise them of what the City is proposing, they expressed concern that some of their sites are unusual and that there would be constraints that would prevent them from having separate water meters. He indicated that there is a provision in the ordinance that would allow the owner of a development, similar to South County Housing, to have internal sub meters that the property manager would have the responsibility for reading and billing. He stated that it is the intent of the ordinance before the Council to require that all new multi family buildings have separate water meters for each unit.

Mayor Kennedy stated that it was his belief that the City already has an ordinance in place that requires separate water meters for the conversion of apartments to condominiums for each unit.

Mr. Eulo indicated that he could not find evidence that separate water meters would be required for each unit in the City's municipal code. He did not believe that such an ordinance is in place as there have been several below market rate projects that have developed in the last several years that have a common meter.

Acting City Attorney Siegel suggested that the Council continue the public hearing for this item to April 6 if it is in support of the intent of the ordinance. Staff will return with a revised ordinance.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Continued** the public hearing to April 6, 2005.*

Acting City Attorney Siegel recommended that the City Council provide comments regarding the internal separate metering in order to allow staff to address the comments and return with an ordinance.

City Manager Tewes informed the Council that the City's regulation for the conversion of rental housing to condominiums requires separate meters. He said that the proposed ordinance would apply to all new construction of rental housing and not just apply to conversion of rental housing.

Council Member Sellers indicated that staff identified the cost savings of 15% because residents are more cautious about the water they use and pay for.

## ***City Council Action***

### **OTHER BUSINESS:**

#### **20. PROPOSED VEHICLE REGISTRATION SURCHARGE FOR SANTA CLARA COUNTY – Resolution No. 5895**

Deputy Director of Public Works Bjarke presented the staff report, indicating that the resolution before the City Council would support proposed Senate Bill 680 that would impose a \$5.00 surcharge on vehicle registration for all registered vehicles in Santa Clara County for an eight year period. The proceeds of this revenue would go toward congestion relief projects with a portion going toward litter removal along freeways and expressways as well as landscape restoration. He informed the Council that the Bill is being promoted by the Silicon Valley Leadership Group and that Laura Stuchinsky was in attendance to answer questions the Council may have. As proposed, the program would raise approximately \$56 million with an approximate 1% administration costs being paid to the Department of Motor Vehicles (DMV). He indicated that \$4 million would go to Caltrain capacity improvements; \$4 million for trash removal and landscape restoration; \$16 million toward the tier 1 County Expressway program; and \$16 million dollars for local improvements. He stated that Morgan Hill would receive approximately \$330,000 as the City's fair share of this source of funding. There is another \$16 million to be used for local street improvements (competitive pot). Cities would have an opportunity to submit projects to VTA for funding that are congested relief related or to improve the operational capacity of the City's road system. It was his belief that Morgan Hill would be competitive for these funding sources. He identified Morgan Hill projects that would be submitted for funding: Cochrane Avenue corridor signal synchronization; City-wide signal synchronization; congestion relief street improvement projects (yet to be identified); matching funds from federal grants for larger projects such as the extension of Butterfield Boulevard to Watsonville Road that involves a grade separation over the railroad tracks, and/or to improve efficiencies to city road systems (yet to be identified). He stated that staff would return to the City Council with more concrete proposals at a later date. He informed the Council that Senator Simitian has requested 100% support from all cities in the County. Once this piece of legislation passes and is signed by the Governor, it would authorize the VTA Board of Directors to implement the program. He indicated that the resolution before the Council this evening is in support of the legislation.

Council Member Grzan inquired as to the number of registered vehicles in Morgan Hill. He further inquired how much revenue can be anticipated to be generated by the community of Morgan Hill

Mr. Bjarke indicated that the Department of Motor Vehicles has not produced a list of registered vehicles by cities.

Ms. Stuchinsky informed the Council that the DMV produced a list of registered vehicles by zip codes and that registered vehicles are not broken down by cities.

Mayor Kennedy stated that at the Cities Association meeting, there was a list provided by population and by City that approximates the amount of vehicle license fees that are paid. From this evaluation, it was determined that Morgan Hill would receive approximately \$330,000 over the life of this program under category 3.

Council Member Grzan inquired how much revenue would the Morgan Hill community put into this project. Should Morgan Hill generate \$2 million and the City only receives \$330,000, he was not sure whether the City would receive a good return.

Mr. Bjarke said that one of the objectives was to create a program that provides regional benefits; noting that there are residents in Morgan Hill that community up through the County expressways and use the freeways. Therefore, it is felt that benefits derive from the passage of this Bill.

Council Member Sellers said that there are approximately 10,000 households in Morgan Hill with each household having three cars. At \$5 per vehicle, it would equate to approximately \$750,000 being collected over the life of the project.

Council Member Grzan noted that commercial vehicles, RVs, and trailers are also registered. He was not sure whether it would be better for the City to charge and receive the monies directly. This would result in the City applying funds to City projects.

City Manager Tewes stated that the State imposes the vehicle registration fee. There is a legislator who is willing to take forward this Bill. It needs to be recognized that there will be a county-wide pot and that a local return to source. He clarified that the City of Morgan Hill cannot impose its own vehicle registration. He said that based on his calculation of 10,000 households times 3 equates to 30,000 vehicles being registered and that approximately \$1.8 million per year could be generated.

Mayor Kennedy said that based on the population for Santa Clara County prorated, Morgan Hill would contribute approximately \$120,000 per year.

Council Member Sellers noted that Morgan Hill has the highest percentage of commuters of any cities in the region who are using other city(ies) and county roads. He felt that the Council needs to rely on public works staff for the competitive funds in order to receive the City's fair share of funding. He acknowledged the efforts of Mr. Bjarke and South County contingents who sought additional funding for Morgan Hill to ensure that we receive our fair share of funding.

Mr. Bjarke said that when staff spoke to County officials, they committed to City staff that Morgan Hill's portion of return to source funds would be spent in the South County area as City staff made it known that it wanted this to be as geographically equitable as possible; particularly South County receiving its fair share. He said that County staff approached City staff and indicated that they would apply the County's share of approximately \$800,000 of return to source, devoting this amount to the South County area. This was proposed to the County subcommittee similar to the City's Transportation and Planning Subcommittee. He stated that Supervisor Don Gage has indicated his support of this Bill/program.

Council Member Carr inquired as to the definition of South County. He noted that when VTA staff was before the Council to address the 2030 Plan, the Council addressed the fact that VTA changed their definition of South County whereby it suddenly included all of Coyote Valley. He noted that the City of San Jose has not proposed any funding source for improving County roads; relaying on the County to improve the roads. Now, the County is stating that they will spend money in South County. He inquired whether the County's funding will be going into Coyote Valley.

Mr. Bjarke indicated that County staff has indicated that they would target funds to South County which comprise of the Cities of Morgan Hill and Gilroy; not Coyote Valley.

Ms. Stuchinsky stated that it would take a 2/3 vote of the VTA Board to enact funding.

Council Member Carr expressed concern that the VTA Board has the authority to enact this Bill. Yet, at any given time, the VTA Board does not represent every City in Santa Clara County. He noted that Senator Simitian wants 100% participation. While the Council agrees that this legislation is a good idea, he expressed concern that when the VTA Board is asked to review this Bill, the City may not have a say in the matter.

Ms. Stuchinsky stated that this is the reason the City of Morgan Hill is being asked to adopt an expenditure plan. This plan will not be a part of the Bill, but will be the guidance that the VTA Board will have to follow as every city will be adopting a resolution in support of the legislature linked to the resolution. She indicated that the Bill follows the VTP 2030 projects identified by the City of Morgan Hill as its top priority projects.

Council Member Carr expressed concern that a Morgan Hill resident may feel that they are being imposed a tax without representation because Morgan Hill does not have a member sitting on the VTA Board and has no one on the Board to voice concerns with.

Ms. Stuchinsky indicated that citizens can testify at a public hearing and that the Council could hold the individual who is representing Morgan Hill, Gilroy and Milpitas on the VTA Board responsible.

Mayor Kennedy felt that although there may be some issues where there are potential flaws, the net benefits to the City would outweigh the risks. He said that the Regional Planning & Transportation Committee reviewed the Bill and recommends Council support of the surcharge.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr stated that he would support the resolution. He agreed that when you weigh all things, the Bill would benefit Morgan Hill. He did not believe that you can deal with transportation if not dealt with on a regional basis or beyond its borders. He felt that the City needs to think about this in a regional way. He stated that the only reservation he has deals with a structural question for VTA.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Adopted** Resolution No. 5895, Supporting the Proposed Senate Bill 680 (Simitian) Imposing a \$5.00 Surcharge on Vehicle Registrations in Santa Clara County Annually for a Period of Eight Years to Fund Specified Transportation Improvements.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.



### **RECONVENE TO CLOSED SESSION**

City Manager/Executive Director Tewes stated that based on the matters already noticed for closed session, the Council/Agency Board needs approximately 10-15 minutes to discuss the remaining closed session items.

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 8:36 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 8:49 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Acting City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:50 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**